

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

AFD Industries	:	
-vs-	:	06-0533
Peoples Gas Light and Coke Company	:	
	:	
Complaint as to billing/charges in	:	
Chicago, Illinois.	:	

ADMINISTRATIVE LAW JUDGES' PROPOSED ORDER

On July 26, 2006, AFD Industries ("Complainant" or "AFD") filed a verified complaint with the Illinois Commerce Commission ("Commission"), against The Peoples Gas Light and Coke Company ("Peoples Gas" or "Peoples" or "Respondent") alleging that it had been over-billed for gas service by Respondent at 1440 East 97th Place, Chicago, Illinois ("Building"). Complainant also contended that there had been another user of gas on its meter during the period from June 2004 to February 2005.

Pursuant to due notice, status hearings were held on August 23 and November 1, 2006. An evidentiary hearing was held on January 3, 2007. Complainant appeared pro se by William H. Westveer. Respondent was represented by counsel. At the evidentiary hearing, Mr. Westveer testified on behalf of the Complainant. Respondent's witnesses were Robin Bland, a gas transportation specialist; Dennis Long an inside service representative in the gas transportation group; and, Brian Schmoldt, a billing specialist, for Respondent. On March 8, 2007, the record was marked "Heard and Taken." The parties' simultaneous Initial Briefs were filed on March 16, 2007, and their simultaneous Reply Briefs were filed on April 6, 2007.

The Administrative Law Judges' Proposed Order was issued on September 11, 2007.

I. COMPLAINANT'S TESTIMONY

William H. Westveer states that AFD is an S corporation. He identified himself a shareholder and director of the corporation. Mr. Westveer was not engaged in any of the day-to-day operations of AFD (Tr. 63). As such, he did not review or pay the gas bills or visit the subject premises during 2004 and 2005. (Tr. 66) And, according to Mr. Westveer, AFD ceased operations in October 2006 when its source for raw materials closed down.

When active in its manufacturing operations, Mr. Westveer explains, AFD processed leather and rawhide leather components into dog chew and rawhide dog chew products. It had operated at 1440 E. 97th Place in Chicago, since August, 2000. On June 4, 2004, AFD expanded its operation at the Building by leasing an additional

32,000 square foot space adjacent to its existing 45,000 square foot space, for a total of approximately 77, 000 square feet in a 250,000 square foot building. Mr. Westveer testified that on September 4, 2004, AFD contacted Peoples Gas to place the gas bill for the additional space in the Building under its name retroactive to June 4, 2004.

Between June 2004 and November 2004, Mr. Westveer testified that AFD was demolishing the existing office structures in its newly acquired space. According to Westveer, the radiant gas heaters were kept low at the time because the rooms were being used to store materials. In the time between November 2004 and January 2005, Mr. Westveer testified, AFD constructed two drying rooms in the space. (Tr.60).

On January 6, 2005, AFD attempted to fire the first drying room in the new space. On January 16, 2005, the firing of the drying room was completed. The second dryer drew too much flame and would not operate. On February 9, 2005, Peoples Gas installed a new, larger meter to accommodate the two new drying rooms and two new dryers.

Mr. Westveer showed that a number of gas bills were being paid during this period. In March 2005, however, AFD received a gas bill for approximately \$330,000.00. Complainant immediately contacted Peoples and spoke with Ms. Bland. According to Mr. Westveer, she advised Complainant that there was a billing error that would be corrected. After this conversation, Complainant received no more bills until December 2005. At various times between May 4, 2005 and November 10, 2005, however, Complainant had contacted Respondent in an attempt to resolve both the large bills and the lack of billing by Respondent.

On November 1, 2005, a third dryer went into operation. According to Mr. Westveer, AFD expected to see an increase in gas usage at this time. In addition to the dryers on premises, Mr. Westveer indicated that there are six to eight radiant gas heaters and a 40 gallon gas water heater in the space. (Tr. 60).

On November 10, 2005, Mr. Westveer testified that Respondent's investigators came to the Building to resolve the lack of invoicing and meter problems. Thereafter, on December 9, 2005, AFD received a fax re-bill from Ms. Bland for \$240,928.71, covering a period of October 2004 to November, 2005.

In January 2006, AFD again initiated contact with Peoples Gas. In March 2006, Ms. Bland and other Peoples' employees came out to the AFD premises. According to Mr. Westveer, AFD and Peoples sat down and talked about gas usage and impementation. Mr. Westveer testified that Peoples did not dispute AFD's calculations. (Tr. 46) During this visit, Mr. Westveer testified, they all went into an adjacent vacant space in the Building. At this point, they observed a gas pipe running from AFD's space. Mr. Westveer testified that Solo Cup had vacated this space in December 2004 or 2005 (TR. 50, 62). In Mr. Westveer's mind, this raised the question as to whether someone else was using gas off of the AFD meter during the relevant period.

According to Mr. Westveer, AFD's landlord told Complainant that its meter serviced the space it was using. Thus, Mr. Westveer testified, AFD had no idea that the meter might possibly also be servicing another area. With the lack of timely bills, Mr. Westveer stated, AFD could not have known or been able to deal with this possibility or take corrective action at any earlier time. (Tr. 48). His own concern arose while reviewing the gas during the past summer (Tr.35).

On examination by Respondent, Mr. Westveer testified that AFD's calculations indicate that its dryers would use between \$6,000 and \$8,000 of gas per month and per unit, at 2004 costs. (Tr.60) He did not introduce these calculations.

According to Mr. Westveer, Complainant disputes all of the billing related to the old gas meter. (Tr. 51-52). It also asks for proof on the initial reading for the new meter (Tr. 51) Mr. Westveer indicated that AFD might have paid about \$20,000 on the old meter billing and he questioned the accuracy of the bills (Tr.50).

Respondent's examination of Mr. Westveer disclosed that there is a current balance owing of \$127,846.21. While Mr. Westveer could not state what portion of that bill was in dispute he made clear that the amount in dispute is what AFD owes on the old meter.

II. RESPONDENT'S TESTIMONY

In his testimony, Mr. Long explained why no bills were issued for several months. He testified that the Respondent needed someone to review the bills because the AFD account was a manufacturing account, taking over from a previous space heating and water heating account. (Tr. 122) He also explained that the meter reading in June 2004 was taken at a time when service was in the name of Calumet Business Center, while the space was vacant and not leased. That bill, however, was subsequently cancelled and ultimately billed to Complainant.

Respondent's witnesses' Bland and Long explained the source of the problem. With the exchange of meters, Bland testified, the new meter was picking up readings all the way back to the start of service on June, 2004. As such, the current actual reading of 55374 also included an estimate of 90385. So too, according to Long, the higher usage for AFD's operations was not properly reflected on prior estimates. He explained that the factors that were applied for what was previously just a space heating and water heating account would not carry over in estimating usage for the manufacturing activity that is AFD's operations. (Tr. 122).

Ms. Bland explained that there is a base factor for each account based on history and when the high-low factor for a particular account does not fit, the billing program will not accept it. (Tr.121). This means that a person needs to look at the account. (Tr.122) According to Ms. Bland, billing stopped for AFD when there was a 68,000 difference in the meter reading. (Tr.132),

Ms. Bland re-billed the account from September 2, 2004 through December 7, 2005, as set forth on Respondent's Exhibit 3A (27 pages). Through her review of service tickets, Ms. Bland found that Respondent's serviceman had provided a stop reading for the old meter of 55374. Based on this reading, she re-billed AFD's account from September 2004 to February 2005. According to Bland, the meter was reading progressively and had a van reading of 88599 in October 2004. There were no other actual readings of the meter until February 2004 when the meter was removed. As part of her rebilling process, Ms. Bland considered the investigator tickets that were admitted into the record as Respondent Ex. 2A, 2B. These held the history of the meter. (Tr. 90). The initial billings were cancelled, Ms. Bland testified, based on the readings and the serviceman's findings.

The bill dated December 1, 2005 appears as Respondent's Ex. 3 q and shows Peoples to have cancelled out prior billing from 9-2-04 to 4-5-2005. According to Bland, the earlier bills from June 4, 2004 through September 4, 2004 were not cancelled out because these fell in line with current readings. Respondent's Ex. 3q shows a present balance of \$321,588.95 and late payment charges of \$949.64. It further includes a credit in the amount of \$2,820.73.

According to Ms. Bland, she visited the Building with Peoples Gas employees, David Denham and Dennis Long in March 2006. She testified that Mr. Westveer and two other gentlemen were present at the time. On this visit, photographs were taken of AFD's gas appliances which included the equipment used for drying the rawhide, the washers, the piping of the adjoining space, the newer larger meter, another older meter whose gas service is not in dispute and still a third meter serving the remainder of the Building.. (Respondent's Exhibits 1A-1J) Ms. Bland noted at that time that that the piping to the adjacent vacant space was capped off. In contradiction to Westveer's testimony, Ms. Bland testified that Respondent's records showed that Solo Cup last used gas service at the building on October 5, 2001.

Mr. Long testified regarding his inspection of the Building in March 2006. He described how the AFD rotary meter operates based upon a pressure differential, the higher the pressure differential, the more cubic feet of gas flowing through the meter. Based upon his meter inspection and the AFD account, the new meter could record the usage that Peoples Gas billed to AFD. Mr. Long also described the old meter that he indicated can pass 7,000 cubic feet of gas per hour. (Tr.148) According to Mr. Long, one of the dryers was operable on the existing meter, but there was a problem in implementing the second dryer. (Tr.149). At this point, Peoples had to change the meter.

He also described the smaller capacity old meter. Mr. Long testified that when AFD brought the second dryer on line in February 2005, the old meter was of inadequate capacity to handle the additional dryer usage by AFD.

Mr. Long reviewed the photographs of the AFD premises introduced by Ms. Bland. He testified that the lines supplying Solo Cup were coming off AFD's meter (Tr. 158-159) He was unable to verify that any gas flowed through the AFD meter to Solo

Cup. He found that the service to Solo's space was capped, that the space was cold and vacant. There was no evidence of gas usage at the time of his inspection. (Tr. 151-152) There were radiant heaters in the Solo Cup space, but they were not in use.

In his testimony, Mr. Schmoldt introduced the meter reading test for the old meter, No. 1684727. Respondent's Exhibit 6 showed that, on February 15, 2005, the meter tested within the limits set forth by the Illinois Commerce Commission.

Mr. Schmoldt further provided a meter reading history for the AFD gas account for the period of June 4, 2004 through December 5, 2006. Respondent's Exs. 7A and 7B. On basis of this document, he testified that on June 4, 2004, an actual meter reading of 81146 was taken by a meter reader. Thereafter, on February 9, 2005, the old meter was removed with an actual meter reading of 55374. According to Mr. Schmoldt, the new meter was also tested as reflected on Respondent's Ex. 8.

Mr. Schmoldt was asked about whether the October 4, 2004 meter reading was 088599 or 098599, for a difference of 10,000 therms. He opined that, as part of the re-billing process, a typo occurred. He explained, however, that this would not bear on the AFD account. According to Schmoldt, both therm usages were "in line" with the end reading of 55374. (Tr. 184). In other words, the AFD meter readings were progressive readings forward from the June 4, 2004 bill. Mr. Schmoldt explained that when this meter hit 9999, it started over again. (Tr.185).

Mr. Schmoldt was unable to explain how AFD would use 7,000 cubic feet of gas in the summer of 2004 and 67,000 cubic feet of gas in the four succeeding winter months of October 2004 to February 2005. He did indicate, however, that the 67,000 cubic feet of gas usage on that size meter was not unusual. (Tr. 188)

Near the close of the hearing, the ALJ asked Mr. Long to provide, with the cooperation of Mr. Westmeer, an analysis that examines the theoretical maximum gas usage of the on line equipment during the indicated timeline.

III. COMPLAINANT'S ARGUMENTS

AFD contends that "estimated" meter readings, administrative errors and poor account customer service resulted in the inability of Respondent to accurately measure the gas consumed by Complainant. Complainant asserts that it only stored raw material in the subject space from approximately October 2004 until February 2005, when its manufacturing operations began in that area. During this five month period, Complainant argues, the gas usage in this space would be insignificant, due to the requirement to keep the perishable raw material cold. In addition, any heat required in such rooms at this time was radiated from the large space occupied by Complainant immediately adjacent to a 250' common wall that was partially demolished. During such time too, Complainant points out that it was installing drying rooms in the subject space. It notes that the documented implementation timelines that it provided for this activity are undisputed by Respondent.

During the demolition process at its newly acquired space, Complainant was notified by its landlord that the gas account in the new space was still in a prior tenant's name and needed to be changed. In late October 2004, Complainant called Respondent to have the service for the new space changed to Complainant's name and retroactively invoice the account to June 4, 2004. Complainant observes that Respondent's Late-filed Ex. 10A shows this meter's reading, dated June 4, 2004, was 81146. Yet, it notes, Respondent's Ex. 10A to show a "schedule date" of November 2, 2004. Complainant argues that it is impossible to conduct an actual reading five months prior to the date of a reading request. Accordingly, Complainant asserts, it is unlikely that Respondent had an actual reading from the exact date Complainant took possession of the space. If the actual reading of meter P1684727 exists for June 4, 2004, Complainant contends that Respondent has failed to provide such evidence. According to AFD, Respondent provided a computer printout for "service orders – AFD Industries" and that order shows a date of November 2, 2004.

Respondent did not provide the field reading ticket as it did in Exhibit #4 for another meter. The next actual reading on this meter was conducted on February 9, 2005. Respondent Exhibit 7.

Complainant observes Respondent's witness Bland to have testified that on November 5, 2004 a "van reading" was conducted. Ms. Bland stated that a van reading is done electronically via a transmitter on the meter that the van's equipment receives. Complainant asserts, however, that Meter P1684727 has no transmitting equipment installed and Respondent did not provide any documentation to support this reading. In reality, Complainant points out that the October 4, 2004 reading is documented as "actual" of 98559 on Complainant's Exhibit 3A and as 88559 on Respondent's Exhibit 7 (noting that both documents were generated by Respondent). Complainant further notes that Respondent's Exhibit 7 also shows the October 4, 2004 reading as "System Est" and "Van." It contends that Ms. Bland's interpretation of this data appears to be incorrect.

Complainant contends that the November 5, 2004 reading is most likely another estimated reading. Complainant believes that neither party knows for certain what that reading was, nor what the June 4, 2004 reading was. Documentation was provided, however, to support the February 9, 2005 reading as actual.

Complainant maintains that the result of Respondent's failure to provide accurate records of the readings on this meter until February 9, 2005 (when Complainant's request for a larger meter was satisfied) is that gas was not billed properly and yet someone had to pay for the gas. Complainant asserts that it took a proactive approach to solve the billing issue with Respondent. It argues that Respondent does not really know who used the gas that flowed through AFD's meters, nor exactly when such gas was consumed.

Complainant claims to have demonstrated that its meter serviced a total of 160,000 sq ft. rather than the 77,000 sq. ft. AFD space. In this regard, AFD notes Mr.

Long testified that he did not notify Complainant that it might be supplying gas to another space. According to its witness Westveer, AFD argues, the basic heating requirements for this additional space would support the additional usage on meter #P1686529 (new meter) that is in dispute.

Complainant considers irrelevant Mr. Long's testimony that no heaters were in use at the adjoining space. This is so, Complainant argues, because that space was vacant during the time visited. For its part, Complainant maintains that the space was actually occupied during the time that this gas use would have occurred.

Complainant contends that its drying rooms were not operable until February 9, 2005, when a larger capacity gas meter was installed. Usage calculations of record, Complainant notes, show that the devices have a theoretical usage volume. (Late-filed Exhibit 1). In Complainant's view, these usages can be compared to the "gas pedal" on a car which a driver will not keep it pushed to the floor. Yet, on start up, more energy is required. Similarly, Complainant argues, these devices rarely run at maximum power and are typically at approximately 33%. According to AFD, this document incorrectly shows the first drying room implementation on January 6, 2005. Complainant asserts that the dryer could not be operated until the new meter (P1686529) was installed, on February 9, 2005, because on "start up" the old meter (P1684727) did not provide enough flow to satisfy the device's safety shut off system.

Despite the large volumes of billed gas usage, AFD argues that Exhibit 1 supports its claim that until the end of 2005, its large capacity devices were not operating. Almost consistently until the end of 2005, Complainant argues, the metered volumes were greater than the theoretical maximum usage of such devices. After the end of 2005, the metered volumes were less than the theoretical maximum usage. That is simply not a possible scenario, Complainant argues, without gas being used elsewhere. According to AFD the 160,000 sq. ft. space that was discussed on record, was occupied until some time in December, 2005.

AFD contends that it was apparent from the hearing on January 3, 2007 that Respondent has inaccurate and incomplete records for the time in question on meter #P1684727 (old meter). It is also clear that early in 2006 (during a meeting with Complainant at AFD's facility), Respondent became aware that the meter in question serviced space not occupied by Complainant and that Respondent did not notify Complainant of this problem.

Complainant argues that the statement that 67,000 cubic feet of gas usage by AFD was not unusual assumes that dryers were being utilized. Complainant suggests that AFD uses that volume of gas on another Peoples Energy account that is not in dispute. But, it notes that the situation here is different because no dryers were active during this time. Complainant's witness Westveer argued that the probable use of that gas was for heating appliances in the Solo space connected to the meter in question.

According to AFD, the Respondent provided its full load theoretical usage calculations on Exhibit 1. This supports Complainant's claim that until the end of 2005, there were large volumes of invoiced gas usage that could not have been used by the drying rooms (implemented 2/9/05). Almost consistently until the end of 2005, Complainant notes, the metered volumes were greater than the theoretical maximum usage of such devices. This is only possible if another source was using gas. After the end of 2005, the metered volumes were less than the theoretical maximum usage. The only explanation for this usage, Complainant asserts, is gas use in the neighboring space in question, or else there are meter issues. According to Complainant, the 160,000 sq. ft. space referred to in its testimony, was occupied until some time in December, 2005, exactly when the usage calculations begin to resemble actual usages.

On June 6, 2006, Complainant explains, it made a good faith payment of \$120,559.00 in order to satisfy its portion of the bill at that time, and based on the maximum gas usage derived from the appliance usage history (Respondent Exhibit 5). AFD believes the amount left unpaid is in dispute. As such, AFD asks that the Commission find in its favor for the disputed balance amount of \$130,376.91. Complainant further requests that the Commission require Respondent to refund the deposits and other payments made by Complainant in the amount of \$3,541.45. Its calculation begins with the current open invoice balance of \$126,835.46 (\$130,376.91-\$3,541.45).

IV. RESPONDENT'S ARGUMENTS

Peoples Gas notes that Complainant's only witness was not part of the day-to-day operations of AFD. Indeed, the record shows that Mr. Westveer did not even review or pay the bills in 2004 and 2005. The work invoices that Mr. Westveer provided might show the times when certain dryers were installed at AFD but, Respondent argues, these documents do not, and cannot, in any way substitute for actual knowledge of the whole of Complainant's operations.

Respondent points out that Mr. Westveer also lacked actual knowledge of Solo Cup's actual tenancy. He contended that Solo Cup was a tenant in the Building until December 2004. Respondent asserts, however, that the record shows that Solo Cup was Peoples Gas' customer only until October 5, 2001. Further, it argues, there is no demonstrable proof that gas was diverted from AFD to Solo Cup, or to any other space in the Building. The March 2005 inspection only showed that the piping was there to divert the gas, but the Solo Cup space was vacant and cold and the piping was capped. As such, Respondent asserts, there is no direct evidence that gas was diverted to another space in the Building. In any event, Respondent argues, any diversion of gas would have occurred after the gas passed through the AFD meter and would be the responsibility of Complainant to determine that such a diversion occurred.

Peoples points out that a careful reading of Mr. Westveer's testimony does not reveal any basis for his contention that the bills issued prior to the installation of the new meter in February 9, 2005 were too high. Peoples notes that the uncontroverted

evidence shows that the old meter, No. 1684727 was tested, both prior to its installation and subsequent to its removal. At all times, Respondent asserts, it tested within the guidelines of the Commission. (Respondent Exhibits 9 and 10). According to Respondent, the actual meter readings taken on June 4, 2004 and February 9, 2005, demonstrated that this meter was reading progressively and properly. Based on these meter readings, Respondent asserts, AFD used the gas flowing through meter 1684727.

Peoples contends it is not enough to object to the new meter bills by stating that AFD wants some better data from Peoples Energy. Noting Mr. Westveer says that he would pay invoices that do not agree with what AFD's consumption calculations, Peoples points out that he never put into the record what those consumption calculations were, the dates covered by the calculations, the gas appliances that were part of the calculation, or any other information.

At the request of the Administrative Law Judge, Respondent's witness Long prepared an analysis of gas usage of AFD covering a period from June 4, 2004 through October 4, 2006. ALJ Exhibit 1 shows that the correct meter reading for October 4, 2004 was 088599. Mr. Long calculated the capacities of the AFD dryers based upon the dates the dryers and drying room came into operation. ALJ Exhibit 1 shows that, based on the dryers' capacities, AFD could have used the amount of gas registered by its gas meter and billed to it. ALJ Exhibit 1 also shows that usages between actual meter reading dates are in line with the estimated dryer usages calculated under the operating scenario provided by the Complainant of 24 hours a day, 7 days a week, as dryers were added and came on line.

According to Peoples, the evidence shows that: 1) AFD's gas meter was operating properly and registering gas usage correctly; 2) AFD's old gas meter was tested prior to its installation and after its removal, and it was registering gas usage within the Commission guidelines; 3) at all times the gas meters at AFD were reading gas usage progressively; 4) AFD's gas appliances had the capacity to use the gas for which AFD was re-billed; 5) there is no evidence of a diversion of gas to another space in the Building; and 6) Respondent's re-billing of the AFD account was accurate and justified.

Peoples notes Complainant to question how AFD could be billed in November 2004 for a meter reading on June 4, 2004 when it was only in the latter month that AFD notified Peoples that it was occupying the additional space.

The books and records of Peoples Gas, demonstrate that the June 4, 2004 meter reading was an actual van reading initially billed to Calumet Business Center. Respondent Exhibits 7 and 10A. Later that bill was cancelled. But, the meter reading was used to bill AFD when AFD took possession of its space on June 4, 2004. The coincidence that the actual meter reading and AFD taking over the space on the same day is not a basis for denying that the actual meter reading taken on June 4, 2004. In this regard, Respondent points to record evidence showing that actual readings and

estimates were made for this account around the fourth of each month. (Respondent's Exhibit 7)

Peoples also responds to AFD's inquiries about whether the October 4, 2004 meter reading was actual and whether it was at a reading index of 88559 or 10 thousand therms higher at 98559. Peoples asserts that ALJ Exhibit 1 shows that the reading on October 4, 2004 to have been 88559. Whether this was a "van" or "estimated" reading is not relevant. In either case, as acknowledged by AFD's Initial Brief, the February 9, 2005 meter reading was "actual" measuring 55374. It is also not disputed that on February 15, 2005, the meter in question tested within Commission guidelines. (See Respondent's Exhibit 6) Thus, the evidence shows that the June 4, 2004 meter reading and the February 9, 2005 reading were actual readings. This demonstrates that 74,228 CCF (100 cubic feet) of gas flowed through the meter properly billed to AFD.

Peoples responds to AFD's contention that the gas was used by someone else by noting that there is no evidence that any other tenant at the Calumet Business Service used the gas that flowed through the meter serving AFD. Prior to AFD taking the space, bills were in the name of Calumet Business Center, not in the name of any tenant. The evidence shows that the Peoples Gas bills were initially forwarded to AFD and not to any other tenant. In any event, the account holder for the gas service in question was AFD. If any gas was used by another party, AFD is responsible to determine the appropriate party and seek recovery of those gas charges from that party.

In reply to AFD's contention that the drying rooms were operating at 33% of their rated capacity and so AFD could not have used the gas that was billed to it, Peoples notes that ALJ Exhibit 1 shows that usages between actual meter reading dates are in line with the estimated dryer usages of 24 hours a day, 7 days a week, as dryers were added and came on line. The usage calculations set forth on ALJ Exhibit 1 are based on actual meter readings and show that, in most instances, except for the period of November 22, 2005 to December 7, 2005, the AFD gas usage was lower than the usage calculated by Mr. Westveer. This fact is reflected in the Average Therms/Day being lower than the Therms/Day for the drying rooms calculated in accordance with the operating schedule provided by Mr. Westveer. ALJ Exhibit 1 also shows a reduction in usage in October 2006 when production ceased at the plant.

V. COMMISSION ANALYSIS AND CONCLUSIONS

The complaint filed in this matter asks the Commission to find that AFD did not use the quantity of gas that Peoples Gas had billed to the Complainant. According to the complaint, the time period at issue is June 4, 2004 through February, 2005. AFD's witness Westveer testified that Complainant disputes all of the billing that occurred under the old meter, i.e., P1684727, that was in use until February 9, 2005. In arguments on brief, the Complaint claims that the amount in dispute is the outstanding balance of \$127,846 (as reflected on Respondent's bill dated December 12, 2005). We begin with an overview the parties' positions.

On the one hand, Complainant states that the major gas-using appliances, i.e., dryers, in the subject space were not operational until January or February, 2005. For the record, Complainant provides certain dryer installation work bills to support its testimony. Further, it is undisputed that on February 9, 2005, a new and larger meter had to be brought onto AFD's premises in order to service the needs of the dryers. Once this occurred, the billing took a strange turn and had to be revised. These revisions, AFD tells us, exceeded Complainant's expectations of usage. As such, Complainant believes that its meter was servicing another adjacent space in the Building.

On the other hand, the Respondent demonstrates that each of the each of the meters serving AFD's space was tested and each passed the tests. In other words, Peoples Gas has shown that its gas meters were in good working condition and were reading progressively. The disconnect in billing, it claims, was owing to the change in type of service. Peoples shows that it corrected the problems through its revised billing. It asserts that this billing accurately reflects AFD's gas usage. According to its records, the alleged tenant in the adjoining space, Solo Cup, last used gas service on October 5, 2001.

1. The billing issues

Having outlined the dispute in general way, we now focus our attention on the issues brought out on the record for this case. From the testimony and exhibits, we find that the billing became an issue for AFD with the April 4, 2005 bill (which included the balance of \$ 64,301.96 on the old meter and current charges of \$256,347.52 for usage on the new meter. The record shows that Complainant disputed this bill with Respondent.

The testimony of Respondent's witnesses shows that this bill was in error. As we understand it, with the change of meters, the new meter began picking up the old meter readings. After eight months of delay, Peoples finally reconfigured the estimate factors and provided AFD with revised billing for the period September 2004-November 2005 as set out in Respondent's Ex. 3A.

With respect to the billing details themselves, the Complainant expresses much concern with the meter reading on October 4, 2004. To be sure, there is a mismatch in the Respondent's records when one document indicates a reading of 98559 (Respond. Ex. 3A), while another document states the reading as being 88559 (Respond. Ex. 7). We accept the testimony that this was a typographical error in transferring data on rebilling resolved in Complainant's favor.

Complainant also questions the June 4, 2004 actual meter reading. The record shows that there was an actual reading on that date for that meter billed to Calumet Business Systems. With the switch to AFD on that date, that reading formed the initial reading for AFD. We find nothing of record to in any way contradict the accuracy of this read. In the Commission's view, this is a non-issue.

The meter in operation during this entire period of June 4, 2004 – February 9, 2005, was tested and it passed. (Respondent's Ex. 6). We observe that actual meter readings were taken on June 4, 2004 (081146) and February 9, 2005 (055374). All of this data appears on Respondent's Ex.7. The readings are progressive. Where the old meter was in good working condition, we must accept that the final reading on February 9, 2005 was correct.

Complainant challenges that some 64,000 feet of gas was used in the months between October 2004 and February 2005. It argues that the first dryer did not operate until February 9, 2005 when the meter was changed. This assertion, however, is not borne out by the weight of the record evidence. Complainant's own exhibit, the timeline of events that guided Mr. Westveer's testimony, flatly states that the first drying room "was fired on 1/6/05 – the first that gas volume would have been used." See Complainant's Ex. 1A. So too, this start date is corroborated by Mr. Long's testimony which states that one of the dryers was operable on the existing meter, but there was a problem in implementing the second dryer. (Tr.149).

2. Gas usage by others

Complainant claims that its meter serviced 160,000 sq ft. rather than the 77,000 sq. ft. in its own space. According to AFD, the basic heating requirements for this additional space would support the additional usage on meter #P1686529 (new meter) that is in dispute.

At the outset, Mr. Westveer was not consistent in his testimony as to the date that this tenant was to have vacated the space in question. At one point, he testified to the date of December, 2004 (Tr. 50). At another time, he stated a date of December, 2005. (Tr. 62).

More to the point, Complainant brought no evidence to show occupancy of the space by a live tenant at either of these times. It would have been easy to get this information from the owner or manager of the building. For example, a copy of a lease for this space would have sufficed. There is no evidence of this type on record.

In contrast, the records of Peoples Gas, as testified to by Ms. Bland show that Solo Cup was its customer only until October 5, 2001. So too, the Respondent's visit to the Building on March 2006 and its inspection of this adjacent space only showed that the capped piping was there from which gas could have been diverted. At this time, however, the Solo Cup space was vacant and cold and the piping was capped. As such, there is no direct evidence to show that gas use by any other tenant in the Building.

Further, Peoples points out that that prior to AFD taking its space, bills were in the name of Calumet Business Center, not in the name of any tenant. The testimony of Mr. Westveer indicates too that the landlord assured AFD that its meter serviced only the space it was using.

The record indicates that Mr. Westveer did not have actual knowledge of Solo Cup's tenancy in the adjoining space. Nor did he know of any other tenant in that area. According to his testimony, Mr. Westveer said he was not on the Solo Cup premises in 2004 or 2005. (Tr. 63)

Under these circumstances, If any gas were used by another party, AFD is responsible to determine the appropriate party and seek recovery of those gas charges from that party. To the extent that AFD is able to make such a discovery, it would be taking the action to the courts and not this Commission.

3. The Final Determination

Having reviewed the record, the Commission finds it necessary to deny the instant complaint. We are not satisfied, however, with the period of time it took for Peoples to issue its rebilling. Further, the reliance on estimates instead of actual readings is troubling to us and to the customer who needs precision in planning for its business operations. Nevertheless, as our rules stand today, the re-billing by Peoples in this instances, falls within the time allowed under 83 Ill. Adm. Code 280.100 . Thus, Complainant is not relieved from payment for gas service in the disputed time period.

That said, we require that Peoples review its records and assure this Commission that all payments made by AFD in the relevant time period of June 2004 – February 2005 were properly credited. According to Respondent Ex. 5 showing payments during the relevant time period and our calculations on basis of this document, that amount totals \$ 13, 629.83. This amount, however, may include deposits and/or other charges.

We are unable to tell from Respondent's Ex. 3A that all of the payments were properly credited on rebilling. We direct Peoples Gas to file a document demonstrating how it applied these payments one week before the initial briefs on exceptions are due.

VI. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) The Peoples Gas Light and Coke Company is a "public utility" as defined in the Illinois Public Utilities Act;
- (2) the Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (3) the findings of fact and conclusions of law reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and findings of law;

Administrative Law Judges' Proposed Order

- (4) the complaint filed on July 26, 2006 by AFD Industries against The Peoples Gas Light and Coke Company should be dismissed, and with prejudice.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the complaint filed on July 26, 2006 by AFD Industries and against The Peoples Gas Light and Coke Company be, and is hereby, dismissed with prejudice.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final, its is not subject to the Administrative Review Law.

DATED:
RESPONDENT'S CALCULATIONS
BRIEFS ON EXCEPTIONS DUE:
REPLY BRIEFS ON EXCEPTIONS DUE:

September 11, 2007
September 18, 2007
September 25, 2007
October 2, 2007

Eve Moran
Terrance Hilliard
Administrative Law Judges